



May 2, 2005

Profile of a Filibustered Nominee: Priscilla Owen

Transcript

Senator McConnell on Hugh Hewitt Radio Show, 4/29/05

Myth-Fact

MYTH: "Shutting down the senate, shutting down the government, that's the heated rhetoric from the other side. That has never been our position." — Sen. Durbin, Face the Nation, 5/1/2005

FACT: Senate Democrats' Leaders repeatedly have threatened to shut down the Senate if judicial nominations receive up-or-down votes.

"Senate Minority [Leader] Harry Reid (D-Nev.) publicly threatened Tuesday to bring the chamber to a standstill on all non-national security issues if Republicans alter filibuster rules." (Paul Kane, Reid Threatens Senate Freeze," Roll Call, March 16, 2005)

"Minority Leader Harry Reid (D-Nev.) has vowed to grind the chamber to a halt if Republicans unilaterally end filibusters on judicial nominees." (Paul Kane, "Kennedy: GOP Hurt By 'Hysteria,'" Roll Call, April 5, 2005)

"Senate Minority Leader Harry Reid warned . . . he would shut down Congress if GOP leaders attempt to block the filibuster of judicial nominees." ("Senate Dems Vow To Shut Down Body Over Judges," UPI, March 15, 2005)

Profile of a Filibustered Nominee: Priscilla Owen

- Justice Priscilla Owen has served on the Supreme Court of Texas since 1995. In 2000, Justice Owen was **overwhelmingly reelected** to a second term on the Supreme

Court, receiving **84 percent of the vote**. During Justice Owen's 2000 re-election bid, every major newspaper in Texas endorsed her.

- Before joining the Texas Supreme Court, Justice Owen was a partner with the well-respected Texas law firm of Andrews & Kurth. She practiced commercial litigation for 17 years.
- Justice Owen earned a B.A. *cum laude* from Baylor University and graduated *cum laude* from Baylor Law School in 1977. After graduating from law school, Justice Owen earned the **highest score in the state** on the December 1977 Texas Bar Exam.
- Justice Owen has **significant bipartisan support, including from three former Democrat judges on the Texas Supreme Court** and a bipartisan group of 15 past Presidents of the State Bar of Texas.
- Justice Owen has devoted much of her life to serving her community. She has served as the liaison to the Texas Supreme Court's Mediation Task Force and to statewide committees on providing legal services to the poor and pro bono legal services. Justice Owen was also part of a committee that successfully encouraged the Texas Legislature to enact legislation that has resulted in millions of dollars per year in additional funds for providers of legal services to the poor.
- Some interest groups have criticized Justice Owen's rulings in a small number of cases interpreting the "judicial bypass" provisions of a Texas parental notice abortion statute. By law, the Texas Supreme Court only hears cases arising under this law when lower courts have already refused to grant a judicial bypass to the notification statute. In some of those cases, Justice Owen agreed with the lower courts and voted to require notice to a parent. On other occasions, she voted to grant an exception to the parental notice requirement or to remand based on the facts of the case. She thus has voted to grant a judicial bypass more readily than the lower-court judges in these cases. Justice Owen was in the majority in 11 of the 14 cases. **None of Justice Owen's opinions have questioned Roe v. Wade or the underlying rights that case recognized.**

Filibuster Timeline

5/9/2001	Nominated to U.S. Court of Appeals for the Fifth Circuit by President Bush
3/27/2003	Passed out of Senate Judiciary Committee with favorable recommendation
5/1/2003	Democrats refused to allow vote on nomination (cloture denied 52-44)
5/8/2003	Democrats refused to allow vote on nomination (cloture denied 52-45)
7/29/2003	Democrats refused to allow vote on nomination (cloture denied 53-43)
11/14/2003	Democrats refused to allow vote on nomination (cloture denied 53-42)

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“I'm confident that we're going to win. It's a shame that we have to do this in order to get back to what worked quite nicely for 214 years in the Senate, when every single judge, without exception, who had majority support, got an up or down vote in the Senate. It's a shame we had to get back to that, to do this to get back to the tradition, but look. It's nothing particularly alarming to the institution of the Senate if we do have to do it. Senator Byrd on four different occasions established precedence, which is what this would do, interpreting a Senate rule by a simple majority. The best thing to call this is not the nuclear option, but the Byrd option....

“I think anybody who's even casually following this knows that what Senator Reid offered us earlier in the week is more than inadequate. He basically said we'll let you have a few judges, even though the president, by the way, only sent up 7 of the 10 that were in contention in the last Congress. So he's already taken three off the table that the Democrats objected to. They're offering us a handful of the remaining seven, and then no guarantees whatsoever that they won't filibuster Circuit Court nominations in the future, or Supreme Court nominations in the future. What the majority leader, Bill Frist is doing is advocating something that's quite narrowly crafted. It would apply to only U.S. Supreme Court and Circuit Court appointments. It wouldn't apply to District Court appointments. It wouldn't apply to executive branch appointments. And it certainly wouldn't apply to the legislative filibuster. We had that vote, ten years ago was the last time we voted on that. Not a single Republican voted to get rid of the legislative filibuster. 19 Democrats did, nine of whom are still in the Senate, one of whom is John Kerry, who voted to get rid of the filibuster for everything. So there's no Republican sentiment for getting rid of the legislative filibuster, or for that matter, even the executive branch filibuster....

“The real issue is the institution of the Senate, and getting back to the way we comfortably operated, within our norms and traditions, for 214 years until the last Congress....

“The Constitution does give to the Senate the right to craft its own rules, and over a period of time, the filibuster did develop. A way to stop the filibuster developed. First, it was 67, now it's 60. You know, we are comfortable with having supermajorities in the Senate for some things. We have never, however, required supermajorities for judicial appointments. And to show you how long that tradition lasted, Judge Bork, nominated in 1987, did not even have majority support in the Judiciary Committee. Nevertheless, no one suggested that he shouldn't go to the floor for an up or down vote. He was defeated. Justice Thomas did not enjoy majority support in the Judiciary Committee. It was tied dead even. No one suggested he shouldn't come to the floor and have an up or down vote. He only got 52 votes, 8 short of what's necessary to shut off a filibuster. It didn't even occur to anybody. Ted Kennedy didn't suggest it. Nobody suggested it, that Clarence Thomas not be given an up or down vote. So this an innovation of theirs, in the previous Congress. It needs to come to a stop, and it will come to a stop.”

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